



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,705	06/27/2003	Martin W. Masters	2003P08280US	9635

7590

02/24/2006

Alexander J. Burke
Intellectual Property Department
5th Floor
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT

PAPER NUMBER

2646

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/608,705	Applicant(s) MASTERS ET AL	
	Examiner Phylesha L. Dabney	Art Unit 2646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to the Applicant's first argument that the locking piece (tab) of Narisawa does not protrude outwards from the module, the Examiner disagrees. The locking piece protrudes outward in a downward direction from the module.


With respect to the Applicant's second argument that the locking piece (tab) of Narisawa does not have an orientation ^{generally}~~generally~~ perpendicular to the peripheral surface, the Examiner disagrees. Since the locking piece of Narisawa has essentially a hook configuration, the lower hooking portion provides a perpendicular orientation.

With respect to the Applicant's third argument that the locking piece (tab) of Narisawa does not have an upper surface generally coplanar with the lower surface of the module, the Examiner disagrees. Since there is at least one point of the locking member that resides in the same plane as at least one point of the lower surface, then the Narisawa reference applies.

With respect to the Applicant's fourth argument that the locking piece (tab) of Narisawa is not in the vicinity of the hinge, the Examiner disagrees. The Narisawa reference is an in the ear hearing aid apparatus. A hearing aid apparatus has to be small enough to fit (usually measured in millimeters) into a user's ear, therefore the Narisawa reference satisfies the broad limitation "in the vicinity of" simply because of the environment and size restraints that are placed on in the ear hearing aids.

With respect to the Applicant's fifth argument that the locking piece of Narisawa is not generally coplanar with and adjacent to the inside surface of the housing when the module is seated in the housing, the Examiner disagrees. Locking piece 21A (fig.6) of Narisawa, which engages the locking piece (tab, 27D), is located at an inner side of the housing and thus considered part of the inner surface comprises a hook configuration, the elongated portion is abuts and is perpendicular to the locking piece (tab, 21D)

Because of all of these reasons, the rejection is maintained.

~~SUPERVISORY PATENT EXAMINER~~
~~SINH TRAN~~

SINH TRAN
SUPERVISORY PATENT EXAMINER